IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5717 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KAILASHBEN J KISHORESINH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MS SUMAN PAHWA for Petitioner

Mr.Premal Joshi, Ld.AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 11/02/2000

ORAL JUDGEMENT

The detenu has filed this petition under Article 226 of the Constitution of India for quashing and setting aside the order of detention dated 14.6.99 made by the Respondent No.2, Commissioner of Police, Ahmedabad City dated 14.6.1999 under the provisions of the Gujarat Prevention of Anti-Social Activities (for short `PASA').

2. From the grounds of detention as found at Annexure B dated 14.6.1999, it transpires that the petitioner was indulging in nefarious activities. The petitioner-detenu was arrested on four occasions as he was found indulging in transporting prohibited foreign made liquor. 2 cases are pending against the detenu and the investigation is pending with regard to 2 cases. It is also pointed out in the ground of detention that the detenu is a bootlegger and is in the habit of beating innocent persons. It is also pointed out that the persons dealing with the detenu are causing alarm by showing dangerous weapons and are in the habit of causing threats to the people. Even the witnesses were not coming forward to disclose the incident as they were afraid and only on condition that their names shall not be disclosed they made statements before the Police Officer.

3. In the instant case, the Court is not dealing with the grounds of detention as the continued detention of the detenu is bad in as much as the representation forwarded by the detenu has not been decided by the State Government. In para (h) & (i), the detenu has averred as under:-

"h. The petitioner submits that the advocate of the petitioner had made a representation dated 23.7.99 to the detaining authority by registered post A.D. on behalf of the petitioner. Annexed hereto and marked as Annexure C to this petition is a copy of the representation dated 23.7.99. That the office of detaining authority has duly received the same on 27.7.1999. The petitioner begs to annex the copy of the acknowledgment card at Annexure D to the petition.

It is submitted that the detaining authority has to satisfy this Hon'ble Court that the representation dated 23.7.99 made on behalf of the petitioner has been considered at the earliest and without any delay. In failing to do so, the continued detention of the petitioner becomes bad in law.

i. The petitioner submits that the advocate of the petitioner had made another

representation dated 31.7.99 to the detaining authority by registered post A.D. on behalf of the petitioner. Annexed hereto and marked as Annexure E to this petition is a copy of the representation dated 31.7.99. That the office of detaining authority has duly received the same.

It is submitted that the detaining authority has to satisfy this Hon'ble Court that the representation dated 31.7.99 made on behalf of the petitioner has been considered at the earliest and without any delay. In failing to do so, the continued detention of the petitioner becomes bad in law."

4. The State Government has not filed any affidavit in the instant case to satisfy the Court that the detenu's representation which was received was disposed of in accordance with law. The Courts have pointed out on number of occasions that it is the duty of the State Government as well as the Detaining Authority to file an affidavit.

5. Suffice it to say that in the instant case, the averments made in the petition have not been controverted by the respondents. The only conclusion that is to be drawn is that the representations forwarded by the detenu are not disposed of in accordance with law and therefore the continued detention is bad, illegal and therefore the order of detention is hereby quashed and set aside. The petition stands allowed accordingly. Rule made absolute. No order as to costs.

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